

Michael Louis Kelly - State Bar No. 82063
mlk@kirtlandpackard.com
Behram V. Parekh - State Bar No. 180361
bvp@kirtlandpackard.com
Heather M. Peterson - State Bar No. 261303
hmp@kirtlandpackard.com
KIRTLAND & PACKARD LLP
2361 Rosecrans Avenue, Fourth Floor
El Segundo, California 90245
Telephone: 310.536.1000
Facsimile: 310.536.1001

*Counsel for Plaintiff, on behalf of herself
and all others similarly situated*

John Shaeffer - State Bar No. 138331
jshaeffer@lathropgagelaw.com
Carole Handler - State Bar No. 129381
chandler@lathropgagelaw.com
Randy Merritt - State Bar No. 187046
rmerritt@lathropgagelaw.com
LATHROP & GAGE, LLP
1888 Century Park East, Suite 1000
Los Angeles, CA 90067
Telephone: 310.789.4600
Facsimile: 310.789.4601

Counsel for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CYNTHIA McCRARY, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

MYLIFE.COM INC., a Delaware Corporation,

Defendant.

Case No. C11-02353 CW

CLASS ACTION

JOINT RULE 26(f) REPORT

Date: June 9, 2011
Time: 2:00 p.m.
Ctrm: 2

1 The parties, by and through their respective counsel, hereby respectfully submit their Joint
2 Rule 26(f) Report.

3 A. Proposed Changes to the Timing, Form or Requirement for Disclosures under Rule
4 26(a)

5 The parties agree that no changes are necessary to the Timing, Form or Requirement for
6 initial disclosures under Rule 26(a) and the May 27, 2011 Case Management Scheduling Order for
7 Reassigned Civil Case. The parties intend to exchange initial disclosures on or before June 14,
8 2011. The parties reserve their right to revise these disclosures based upon subsequent events.

9 B. Subjects for Discovery, When Discovery Should be Completed, and Whether Discovery
10 Should be Conducted in Phases or be Limited

11 The parties agree that the appropriate subject matters for discovery include issues related to
12 class certification, such as commonality, adequacy, typicality, and superiority of a class action,
13 issues related to whether or not the conduct alleged was deceptive or misleading, and issues related
14 to the potential damages and restitution available to the putative class.

15 Plaintiff contends that discovery should commence immediately and that there should be no
16 bifurcation of discovery between class and merits issues. Plaintiff believes that, unlike many other
17 class actions, the issues in this litigation are not complex. As described in the parties Joint Case
18 Management Conference Statement, the gravamen of Plaintiff's Complaint is that Defendant
19 misled Plaintiff and putative class members into thinking that "someone" was looking for them and
20 caused them to pay Defendant to sign up for the service. Plaintiff alleges that, in reality, nobody
21 was looking for Plaintiff or the putative class members. Plaintiff and putative class members have
22 lost money and property as a result of Defendants' deceptive actions.

23 Given the relatively simple facts at issue, Plaintiff believes the discovery related to class
24 certification and the discovery related to merits issues will be virtually identical and any bifurcation
25 of discovery will ultimately lead to greater inefficiencies and costs as the parties will be forced to
26 argue over, and potentially litigate before the Court, whether any particular discovery request is
27 class or merits related. Further, it is likely that the individuals whose depositions will be required
28 will be the same individuals for class and merits issues. It would be extremely inefficient to depose

1 such individuals twice, and it is likely that Defendant will insist on a single deposition as to all
2 issues. Plaintiff, however, will not be able agree to such a single deposition without complete
3 document and written discovery on all related topics. Plaintiff, therefore, respectfully submits that
4 discovery should not bifurcated between class and merits in this matter.

5 Defendant contends that discovery should be stayed until it has filed an answer to the
6 operative complaint in this matter. Once the pleadings have been finalized, a deadline for hearing
7 Plaintiff's motion for class certification should be set for 180 days after the filing date of
8 Defendant's answer. Until the Court has ruled on Plaintiff's motion for class certification,
9 discovery should be limited to discovery relevant for the adjudication of class certification. As
10 Plaintiff has offered no indication that they intend to pursue their claims against Defendant absent
11 class certification, unfettered merits discovery imposes an unfair and wasteful burden on
12 Defendant. Merits discovery should commence only after determination of the class certification
13 motion, with trial set to start one year after the Court issues its class certification order.

14 The parties are cognizant that there may be expert discovery necessary during the briefing
15 of the motion for class certification. The parties believe that the best method to handle such issues,
16 as well as the potential need for additional fact discovery after the filing of the motion for class
17 certification, is to extend Defendant's time to respond to Plaintiff's motion for class certification in
18 order to accommodate the need for potential expert depositions and additional factual discovery,
19 and similarly, to extend Plaintiff's time to submit a reply, again, to accommodate the need for
20 potential expert depositions and additional factual discovery. This will allow the class certification
21 motion to be filed at the earliest possible point in time, and allow subsequent discovery efforts to
22 be more narrowly tailored to the specific issues raised by the motion and opposition briefs.

23 C. Disclosure or Discovery of Electronically Stored Information

24 The parties have agreed to meet and confer regarding a protocol for the searching and
25 production of electronically stored information in order to ensure that such information is produced
26 in a manner usable to all parties, and which maintains the metadata, searchability, and character of
27 the electronically stored information.
28

1 D. Privilege Issues

2 The parties expect that some privilege and privacy issues may arise regarding documents
3 and information in the parties' possession. The parties do not anticipate that these issues will be
4 any more significant or unmanageable as compared to privilege questions in other cases. The use
5 of privilege logs and a stipulated protective order based upon the Northern District's Stipulated
6 Protective Order for Standard Litigation should adequately protect both privacy rights and
7 privileged documents.

8 E. Changes to the Limitations on Discovery Imposed by the Rules of Civil Procedure

9 The case is at a very preliminary stage and the parties believe it is premature at this point to
10 be able to determine whether changes to the limitations on discovery imposed by the Federal Rules
11 of Civil Procedure will be necessary or warranted. Plaintiff believes that it is likely that she might
12 require additional depositions and interrogatories, however, the parties have agreed to meet and
13 confer and attempt to reach a resolution on the scope of any such increase when or if it becomes
14 necessary.

15 F. Other Discovery Issues

16 Defendants believe that the Court will need to enter a stipulated protective order to protect
17 non-public and confidential documents and information, whether belonging to Defendants or any
18 third-party. The parties agree that such a protective order will be based on the Northern District's
19 Stipulated Protective Order for Standard Litigation, with modifications as necessary. Other than
20 such a protective order, the parties are not aware of any other orders that they believe the Court
21 should issue under Rule 26(c) or Rule 16(b) and (c).

22 DATED: June 2, 2011

RESPECTFULLY SUBMITTED,

KIRTLAND & PACKARD LLP

By: /s/ Behram V. Parekh

MICHAEL LOUIS KELLY

BEHRAM V. PAREKH

HEATHER M. PETERSON

*Counsel for Plaintiff, on behalf of
herself and all others similarly situated*

LATHROP & GAGE LLP

By: /s/ John Shaeffer
JOHN SHAEFFER
CAROLE HANDLER
RANDY MERRITT

Counsel for Defendant

I, Behram V Parekh, hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (/s/) within this e-filed document.

DATED: June 2, 2011

By: /s/ Behram V. Parekh
BEHRAM V. PAREKH